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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,691	11/03/2000	Christofer Fuchs	CM1764Q/VB	3267

27752 7590 07/30/2003

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

[REDACTED] EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
1771	/ /

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/674,691	FUCHS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeremy R. Pierce	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 May 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 and 6-17 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4, 6-14, 16 and 17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 8, 2003 has been entered.

### ***Response to Amendment***

2. Amendment B has been entered as Paper No. 8. Claims 1 and 14 have been amended. New claims 16 and 17 have been added.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-4, 6-14, 16, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the web may be a "tissue web." This is indefinite because a tissue web can be made from any number of processes. Tissues can be woven and nonwoven, and are generally made any number of ways. Does applicant mean webs made similar to paper? The specification sets forth no detail as to how a tissue web is made.

***Claim Rejections - 35 USC § 102/103***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 6-13, 16, and 17 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Weder (U.S. Patent No. 6,151,830).

Weder discloses a sleeve material that comprises a plurality of folds that are connected by an adhesive or cohesive bonding material (column 2, lines 50-62). The sleeve material may be paper, foil, film, woven, or nonwoven fabric (column 5, lines 16-19). The folds act as an expansion means when the sleeve material needs to have a greater length, while the connecting material constricts the expansion of the folds when expansion is not needed (column 9, lines 16-36). Although Weder does not explicitly teach the limitations of Relative Expansion Tension Reduction, Discontinuous Expansion Threshold, Discontinuous Expansion Point, elongation at Tearing Point, and Contraction Force, it is reasonable to presume that said limitations are inherent to the invention of Weder. Support for said presumption is found in the use of similar materials (i.e. nonwoven webs or films as the web material) and in the similar production steps (i.e. adhesively joining folds in the web material that are designed to fracture) used to produce the sleeve. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. If not inherent, the claimed properties would still be obvious to provide for the following reasons. Regarding the property of Relative Expansion Tension Reduction, increasing said reduction would be a result effective variable induced by using more adhesive material at the bonding locations. If the sleeve of Weder were not specifically designed to meet the at least 90% reduction in tension, it would have been obvious to a person having ordinary skill in the art to use more adhesive at the connecting points in order to obtain a stronger bond and a greater drop in tension, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205

USPQ 215 (CCPA 1980). Similar modification could be done to adjust the Discontinuous Expansion Threshold. With regard to the Discontinuous Expansion Point, the Examiner would argue that there exists little tension after the bonding point breaks, but before the sleeve is fully extended. With regard to claims 9-11, the first and second regions have no parameters other than the difference in basis weight. So one could define any first region of the sleeve of Weder to be a different basis weight than any second region of the sleeve of Weder. With regard to the Contraction Force, the Examiner argues that there would be insufficient Contraction Force in the sleeve of Weder, because the sleeve is not made of an elastic material. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. With regard to claim 16, Weder discloses z-fold and accordion fold (column 3, lines 13-17). With regard to claim 17, the folds can be bonded by the inner peripheral surface (column 9, lines 20-22).

8. Claims 1-4, 6-14, 16, and 17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Delmar (U.S. Patent No. 3,785,406).

Delmar discloses an extendable plastic tube folded over itself and bonded, where a relatively low pulling force acts to rupture the bonds and extend the plastic material (column 1, lines 10-34). The bonds are created by heat-sealing the plastic (column 1, lines 35-40). Although Delmar does not explicitly teach the limitations of Relative Expansion Tension Reduction, Discontinuous Expansion Threshold, Discontinuous

Expansion Point, elongation at Tearing Point, and Contraction Force, it is reasonable to presume that said limitations are inherent to the invention of Delmar. Support for said presumption is found in the use of similar materials (i.e. film web material) and in the similar production steps (i.e. thermally bonding folds in the web material that are designed to fracture) used to produce the tube. The burden is upon the Applicant to prove otherwise. If not inherent, the claimed properties would still be obvious to provide for the following reasons. Regarding the property of Relative Expansion Tension Reduction, increasing said reduction would be a result effective variable induced by thermally bonding larger portions of the plastic. If the tube of Delmar were not specifically designed to meet the at least 90% reduction in tension, it would have been obvious to a person having ordinary skill in the art to use more thermal bonding at the connecting points in order to obtain a stronger bond and a greater drop in tension, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Similar modification could be done to adjust the Discontinuous Expansion Threshold. With regard to the Discontinuous Expansion Point, the Examiner would argue that there exists little tension after the bonding point breaks, but before the sleeve is fully extended. With regard to claims 9-11, the first and second regions have no parameters other than the difference in basis weight. So one could define any first region of the tube of Delmar to be a different basis weight than any second region of the tube of Delmar. With regard to the Contraction Force, the Examiner argues that there would be insufficient Contraction Force in the tube of

Delmar, because the sleeve is not made of an elastic material. With regard to claims 14, 16, and 17, Delmar show a transverse z-fold that is thermally bonded (Figure 3).

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-4, 6-14, 16, and 17 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce  
Examiner  
Art Unit 1771

July 14, 2003



ELIZABETH M. COLE  
PRIMARY EXAMINER